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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,782	02/28/2002	Carol L. Colrain	50277-1957(OID No. 2000-1	8991
29989	7590	05/17/2005	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110			DODDS, HAROLD E	
			ART UNIT	PAPER NUMBER
			2167	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/086,782

Applicant(s)

COLRAIN ET AL.

Examiner

Harold E. Dodds, Jr.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 45-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/6/05, 3/15/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 45 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of "IP" in these independent claims renders them indefinite. An appropriate correction would be the insertion of the phrase "internet protocol (IP)" in these independent claims.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 45, 46, 48, 52-54, 56, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gamache et al. (U.S. Patent No. 6,463,457) and Armentrout et al. (U.S. Patent No. 6,463,457).

4. Gamache renders obvious independent claims 45 and 53 by the following:  
“...a service requestor using an IP address to access a service provided by a first node within a cluster...” at col. 7, lines 30-32, col. 5, lines 37-43, and col. 9, lines 56-58.  
“...in response to said first node becoming unavailable...” at col. 9, lines 56-58 and col. 20, lines 10-12.  
“...automatically configuring a second node of the cluster...” at col. 9, lines 25-27, col. 9, lines 62-64, and col. 9, lines 2-4.  
“...associated with said IP address...” at col. 5, lines 39-43.  
“...after said first node becomes unavailable...” at col. 9, lines 56-58 and col. 20, lines 10-12.  
“...the service requestor using said IP address...” at col. 7, lines 30-32 and col. 5, lines 39-43.  
“...to send a message to said cluster related to said service...” at col. 5, lines 62-67, col. 6, lines 1-2.  
“...said second node of the cluster...” at col. 9, lines 2-4.

Gamache does not teach the use of responses requests and messages and the recognition of error conditions.

5. However, Armentrout teaches the responses requests and messages and the recognition of error conditions as follows:

"...to respond to requests..." at col. 22, lines 55-56.

"...and in response to said message..." at col. 23, lines 64-67.

"...sending a response that indicates an error condition..." at col. 17, lines 62-34 and col. 24, line 2.

It would have been obvious to one of ordinary skill at the time of the invention to combine Armentrout with Gamache to provide responses to requests and messages in order to use standard communication protocol between members of a network and to promote user acceptance of the system. Likewise, it would have been obvious to one of ordinary skill at the time of the invention to combine Armentrout with Gamache to detect error conditions in order to identify when a member of the network has an error condition and to permit appropriate action to be taken to correct the problem or take another corrective action and thus provide a more stable system. Gamache and Armentrout teach the use of related systems. They teach the use of computers, the use of databases, the use of networks, the use of nodes, the use of clusters, the use of services, the use of resources, the use of applications, the monitoring of status, the use of paths, and the detection of failures.

6. As per claims 46 and 54, the "...upon receiving said response..." is taught by Armentrout at col. 18, lines 21-23, the "...service requestor identifying a second IP address to access said service..." is taught by Gamache at col. 7, lines 30-32 and col. 5, lines 37-43, the "...and the service requestor using said second IP address..." is taught by Gamache at col. 7, lines 30-32 and col. 5, lines 39-43,

the "...to send a second message to said cluster related to said service..." is taught by Gamache at col. 5, lines 62-67 and col. 6, lines 1-2.

7. As per claims 48 and 56, the "...in response to said first node becoming unavailable..." is taught by Gamache at col. 9, lines 56-58 and col. 20, lines 10-12, the "...determining if said first node is configured..." is taught by Gamache at col. 9, lines 56-58 and col. 9, lines 62-64, and the "...to allow the service to be provided by another node of the cluster..." is taught by Gamache at col. 7, lines 16-19 and col. 9, lines 2-4.

8. As per claims 52 and 60, the "...wherein said first node comprises a monitor process..." is taught by Gamache at col. 9, lines 56-58 and col. 7, lines 45-48, the "...and wherein said monitor process is configured..." is taught by Gamache at col. 7, lines 45-48 and col. 9, lines 62-64, and the "...to detect if said first node becoming unavailable..." is taught by Gamache at col. 12, lines 28-31, col. 9, lines 56-61, and col. 20, lines 10-12.

9. Claims 47, 49-51, 55, and 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gamache and Armentrout as applied to the claims above, and further in view of Dugan et al. (U.S. Patent No. 6,804,711).

As per claims 47 and 55, the "...storing, at the first node, information identifying one or more nodes of the cluster..." is taught by Gamache at col. 6, lines 33-37, col. 9, lines 56-58, col. 10, lines 3-6, and col. 5, lines 53-59, the "...may be instructed to provide the service..." is taught by Gamache at col. 3, lines 50-53 and col. 7, lines 16-19,

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and the "...if the first node becomes unavailable..." is taught by Gamache at col. 9, lines 56-58 and col. 20, lines 10-12,

but the "...as being standby nodes..."

and the "...wherein each of the one or more standby nodes..." are not taught by either Gamache or Armentrout.

However, Dugan teaches the use of standby nodes as follows:

"...At such time that there is a failure in the node cache database, or, when the hot cache 771a is currently unavailable to receive further updates, the system switches from the hot cache 771a to the standby cache 771b which then functions as a hot cache..." at col. 23, lines 56-60.

It would have been obvious to one of ordinary skill at the time of the invention to combine Dugan with Gamache and Armentrout to provide standby nodes in order to have nodes to switch to in the case of failure in the node cache and thus promote greater stability of the system. Likewise, it would have been obvious to one of ordinary skill at the time of the invention to combine Armentrout with Gamache to detect error conditions in order to identify when a member of the network has an error condition and to permit appropriate action to be taken to correct the problem or take another corrective action and thus provide a more stable system. Gamache and Armentrout teach the use of related systems. They teach the use of computers, the use of databases, the use of networks, the use of nodes, the use of clusters, the use of services, the use of resources, the use of applications, the monitoring of status, the use of paths, and the detection of failures.

10. As per claims 49 and 57, the "...in response to determining said first node is configured...", is taught by Gamache at col. 9, lines 56-58 and col. 9, lines 16-19, the "...to allow the service to be provided by another node of the cluster...", is taught by Gamache at col. 7, lines 16-19 and col. 9, lines 2-4, the "...determining a standby node...", is taught by Dugan at col. 23, lines 56-60, the "...of the cluster to perform the service...", is taught by Gamache at col. 9, lines 2-4 and col. 7, lines 16-19, the "...and instructing the standby node...", is taught by Dugan at col. 5, lines 56-61 and col. 23, lines 56-60, and the "...to perform the service...", is taught by Gamache at col. 7, lines 16-19.

11. As per claims 50 and 58, the "...in response to said first node becoming unavailable...", is taught by Gamache at col. 9, lines 56-58 and col. 20, lines 10-12, the "...instructing a standby node...", is taught by dugan at col. 5, lines 56-61 and col. 23, lines 56-60, the "...of the cluster to perform the service...", is taught by Gamache at col. 9, lines 2-4 and col. 7, lines 16-19, the "...determining if the plurality of services...", is taught by Gamache at col. 7, lines 16-19, the "...provided by the standby node...", is taught by Dugan at col. 23, lines 56-60, the "...may be provided by another node of the cluster...", is taught by Gamache at col. 9, lines 2-4, the "...and if the plurality of services...", is taught by Gamache at col. 7, lines 16-19,



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the "...provided by the standby node...", is taught by Dugan at col. 23, lines 56-60,  
the "...may not be provided by another node of the cluster...", is taught by Gamache at col. 8, lines 45-57 and col. 9, lines 2-4,  
the "...configuring the standby node...", is taught by Dugan at col. 9, lines 17-21 and col. 23, lines 56-60,  
the "...to disallow the plurality of services...", is taught by Gamache at col. 18, line 67, col. 19, lines 1-4, and col. 7, lines 16-19,  
and the "...to be provided by another node of the cluster...", is taught by Gamache at col. 9, lines 2-4.

For claims 50 and 68, the terms "refuse" and "prevent" are used to suggest the terms "not provide" and "disallow", respectively.

12. As per claims 51 and 59, the "...in response to configuring the standby node...", is taught by Dugan at col. 9, lines 17-20 and col. 23, lines 56-60,  
the "...to disallow the plurality of services...", is taught by Gamache at col. 18, line 67, col. 19, lines 1-4, and col. 7, lines 16-19,  
the "...to be provided by another node of the cluster...", is taught by Gamache at col. 9, lines 2-4,  
and the "...issuing an alert to a user...", is taught by Armentrout at col. 24, lines 37-38.

### ***Response to Arguments***

13. Applicants' arguments with respect to claims 1-44 have been considered but are moot in view of the new ground(s) of rejection. In the first argument for claims 1-44 on page 10, paragraphs 3-5 the Applicants state:

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"The Applicants admit to being perplexed by the arguments provided by the Office Action supporting the rejection of Claims 1-44. Specifically, to support an obviousness rejection, the Applicant would expect an argument that has the following form: (1) element X is shown in reference A, (2) element Y is shown in reference B, and (3) there is some actual suggestion to combine the references A and B to create the mechanism or technique that has both elements X and Y.

However, the Office Action does not support the obviousness rejections in that manner. Rather, to support the obviousness rejections, not only has each claim been divided into its constituent elements, but also each constituent element of the claim has been finely dissected into a set of short phrases and sentence fragments. The Office Actions then point out how each individual fragment corresponds to a similar fragment in any one of a handful of references. The fragment-to-prior-art correlation appears to have been made without any consideration as to the relationship between the fragments, the meaning of the elements as a whole, and the meaning of the claim as a whole.

It is respectfully submitted that a claim may not be validly rejected simply because each word or phrase in the claim appears in a prior art reference, without regard to what meaning is ascribed to the word or phrase given its placement in the claim."

The Examiner disagrees. Claims 1-44 have been cancelled. The references of Gamache and Larson fully supported the rejection of claims 1-44 based on obviousness. New art is required because of the canceling of claims 1-44 and the substitution of new claims 45-60. This obviousness rejection involves using Gamache and two new references Armentrout et al. (U.S. Patent No. 6,463,457) and Dugan et al. (U.S. Patent No. 6,804,711). The Applicants will find that Gamache together with the new references renders obvious the substituted claims.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

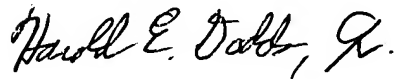
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold E. Dodds, Jr. whose telephone number is (571)-272-4110. The examiner can normally be reached on Monday - Friday 8:00 - 4:30.

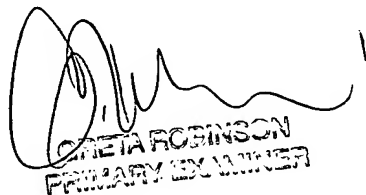
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571)-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Harold E. Dodds, Jr.  
Patent Examiner  
May 16, 2005



Oretta Robinson  
Primary Examiner